IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

OP.No. 31044 of 1999(U)

PETITIONERS:

1. N.RAMAN, S/O.LATE MANIYAN, CHINDAN, AGED 63YEARS, VARAKKOTTUVAYAL, PILIKODE VILLAGE, PILIKODE, HOSDURG TALUK, KASARGOD DISTRICT.

2. KUNHAMBU, S/O. LATE AMBU, PILIKODEVAYAL P.O., PILIKODEV HOSDURG TALUK, KASARGOD DISTRICT.

3. K.VELUTHAMBU, S/O.MANIKOM KULIRAMKAI HOUSE, KLAIKODE P.O. PILIKODE, HOSDURG TALUK, KASARGOD DISTRICT.

BY ADV. SRI.V.N.RAMESAN NAMBISAN

RESPONDENTS:

1. SPECIAL TAHSILDAR, LAND ACQUISITION (RAILWAY) KASARGOD.

2. DISTRICT COLLECTOR, KASARGOD.

BY ADV. SRI.BASANT BALAJI, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO. 31044 OF 1999

ORDER ON CMP No.52867 OF 1999 IN OP No. 31044 OF 1999

DISMISSED.

09.10.2007 SD/- K.PADMANABHAN NAIR

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 12(2) OF THE LAND ACQUISITION ACT 1894 TO THE 1ST PETITIONER DATED 09.07.98.

EXT.P2 : TRUE COPY OF THE LETTER SEND BY THE 1ST PETITIONER TO THE LAND ACQUISITION OFFICER DATED 11.06.98.

EXT.P3 : TRUE COPY OF THE OBJECTION APPLICATION FILED BY THE 1ST PETITIONER DATED 20.08.98.

EXT.P4 : TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPNDENT DATED 07.10.98.

EXT.P5 : TRUE COPY OF THE NOTICE ISSUED TO THE 2ND PETITIONER DATED 09.07.98.

EXT.P6 : TRUE COPY OF OBJECTION APPLICATION FILED BY 2ND PETITIONER DATED 20.08.98.

EXT.P7 : TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 07.10.98.

EXT.P8 : TRUE COPY OF THE OBJECTION APPLICATION FILED BY THE 3RD PETITIONER DATED 20.08.98.

EXT.P9 : TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 07.10.98.

/TRUE COPY/

PA TO JUDGE

K.PADMANABHAN NAIR, J.

O.P. NO. 31044 OF 1999

Dated this the 9th day of October, 2007

J U D G M E N T

The properties of the petitioners were acquired for a public purpose. Awards were passed and the petitioners had received the compensation. Subsequently, they have filed a petition under Section 18 of the Kerala Land Acquisition Act to refer the matter to the Subordinate Judges court for considering their claim for enhancement. That was rejected on the ground that petitioners received the D form cheque without any protest. This writ petition is filed challenging that order.

2. The respondents have filed a counter affidavit admitting that petitioners have filed the application under Section 18 within time. Exts.P3, P6 and P8 are the applications wherein it is prayed that the matter may be referred to the Subordinate Judges court having jurisdiction over the area. Those applications were rejected. The only reason stated was that at the time of receipt of the cheque the petitioners did not endorse in the counter foil of the cheque that they had received the same under protest. It is trite law that the protest need not be in writing. It can be oral also.

3. In Exts.P3, P6 and P8, it is specifically averred that the petitioners received the award amount under protest. So, I accept the case of the petitioners that they have received the amount under oral protest. So the stand taken by the Land Acquisition officer that the cases will not be referred to the Subordinate Judges court, is illegal. Hence, Exts. P4, P7 and P9 orders are liable to be quashed.

In the result, the original petition is allowed. Exts. P4, P7 and P9 orders passed by the Special Tahsildar, Land Acquisition (Railway) Kasargod, are hereby quashed. He is directed to refer the matter to the Subordinate Judges court having jurisdiction over the area under Section 18 of the Kerala Land Acquisition Act for considering the claim of enhancement raised by the petitioners, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment .

K.PADMANABHAN NAIR, JUDGE

vps

K.PADMANABHAN NAIR, J.

O.P. NO.31044 OF 1999

JUDGMENT

9th day of October, 2007